In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-657

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, AND ITS AGENT CHARLES TREMPER, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, EVANSVILLE CHAPTER, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. The National Labor Relations Board (two members dissenting) held that Local 103 (the Union) did not violate Section 8(b)(1)(B) of the National Labor Relations Act[1] by bargaining to impasse, and then

[1] This section makes it an unfair labor practice for a labor organization to restrain or coerce "an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances."

striking, to compel the Associated General Contractors, Evansville Chapter (the Association) to agree to a contract clause providing that jurisdictional disputes be resolved by the National Joint Board for the Settlement of Jurisdictional Disputes, on which the Union—but not the Association—was represented.[2] In the Board's view, the demand in this case did not involve "an employer's selection of his representative for purposes of collective bargaining, for the function of any group designated to resolve such jurisdictional disputes is not to negotiate on behalf of the parties before it but is more in the nature of an umpire or a knowledgeable arbitration panel to consider only certain types of problems." 190 NLRB No. 145, p. 2. The Board found, however, that the Union's negotiating stance concerning the mechanism for resolving jurisdictional disputes was fixed and inflexible, and thus that it had failed to bargain in good faith in violation of Section 8(b)(3) of the Act. *Id.*, pp. 6–7.

2. The court sustained the Board's finding that the Union refused to bargain in good faith, but held that the Union had violated Section 8(b)(1)(B) of the Act (Pet. App. A1–A14). The court concluded that the statutory phrase "adjustment of grievances," in Section 8(b)(1)(B), is broad enough to include the adjustment of jurisdictional disputes, noting that

[2] That Board, established by the Building Trades Department of the AFL–CIO and certain employer groups, is comprised of an equal number of employer and union designees under the chairmanship of an impartial member. The National Association, which originally was a member of this body and of which the Evansville Chapter is a subsidiary, withdrew in September 1969 (Pet. App. A2).

"jurisdictional disputes involve actual labor grievances in which the employer may be vitally interested and to which he is a party" (Pet. App. A7). The court also rejected the Board's finding that the Joint Board functioned as an "umpire" in resolving jurisdictional disputes. Rather, the court ruled that "only the Chairman [of the Joint Board] is truly impartial"; the employer members of the tripartite Joint Board panels are "expected to espouse the viewpoint of the employer party," and thus they functioned as the employer's "representatives" within the meaning of Section 8(b)(1)(B) (Pet. App. A9).[3] The court accordingly remanded the case to the Board to issue an order "restraining the violation of "Section 8(b)(1)(B) of the Act, and to "restrain also the violation of Section 8(b)(3) inherent in the Union's insistence that the Association agree to the resolution of jurisdictional disputes by a tripartite board on which the Association is unrepresented" (Pet. App. A14).

[3] The court found that the provisions of the Joint Board plan at issue here expressly stated that the employer members functioned as "representatives" of employer disputants (Pet. App. A7–A8).

3. The basic question presented by the petition is whether the court properly concluded that the employer members of the National Joint Board for the Settlement of Jurisdictional Disputes serve as the representative of the employer involved in a jurisdictional dispute, and not merely as an umpire. Although the Board believes that the court of appeals should have accepted its conclusion, it did not petition for certiorari because, in its view, the difference between the Board and the court turns essentially on a differing evaluation of the facts of this particular case and does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

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